

AN ACT

relating to the prosecution of the criminal offense of theft of service.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 31.04, Penal Code, is amended by amending Subsections (b), (c), (d), and (d-1) and adding Subsections (d-2), (d-3), (d-4), and (d-5) to read as follows:

(b) For purposes of this section, intent to avoid payment is presumed if any of the following occurs:

(1) the actor absconded without paying for the service or expressly refused to pay for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, campgrounds, recreational vehicle parks, restaurants, and comparable establishments;

(2) the actor failed to make payment under a service agreement within 10 days after receiving notice demanding payment;

(3) the actor returns property held under a rental agreement after the expiration of the rental agreement and fails to pay the applicable rental charge for the property within 10 days after the date on which the actor received notice demanding payment; ~~or~~

(4) the actor failed to return the property held under a rental agreement:

(A) within five days after receiving notice

1 demanding return, if the property is valued at less than \$2,500;
2 [~~or~~]

3 (B) within three days after receiving notice
4 demanding return, if the property is valued at \$2,500 or more but
5 less than \$10,000; or

6 (C) within two days after receiving notice
7 demanding return, if the property is valued at \$10,000 or more; or

8 (5) the actor:

9 (A) failed to return the property held under an
10 agreement described by Subsections (d-2)(1)-(3) within five
11 business days after receiving notice demanding return; and

12 (B) has made fewer than three complete payments
13 under the agreement.

14 (c) For purposes of Subsections (a)(4), (b)(2), [~~and~~]
15 (b)(4), and (b)(5), notice must [~~shall~~] be:

16 (1) [~~notice~~] in writing;

17 (2) [~~7~~] sent by:

18 (A) registered or certified mail with return
19 receipt requested; or

20 (B) commercial delivery service; [~~or by telegram~~
21 with report of delivery requested,] and

22 (3) sent [~~addressed~~] to the actor using the actor's
23 mailing [~~at his~~] address shown on the rental agreement or service
24 agreement.

25 (d) Except as otherwise provided by this subsection, if [~~if~~]
26 written notice is given in accordance with Subsection (c), it is
27 presumed that the notice was received not [~~no~~] later than two [~~five~~]

1 days after the notice [it] was sent. For purposes of Subsections
2 (b)(4)(A) and (B) and (b)(5), if written notice is given in
3 accordance with Subsection (c), it is presumed that the notice was
4 received not later than five days after the notice was sent.

5 (d-1) For purposes of Subsection (a)(2), the diversion of
6 services to the benefit of a person who is not entitled to those
7 services includes the disposition of personal property by an actor
8 having control of the property under an agreement described by
9 Subsections (d-2)(1)-(3), if the actor disposes of the property in
10 violation of the terms of the agreement and to the benefit of any
11 person who is not entitled to the property.

12 (d-2) For purposes of Subsection (a)(3), the term "written
13 rental agreement" does not include an agreement that:

14 (1) permits an individual to use personal property for
15 personal, family, or household purposes for an initial rental
16 period;

17 (2) is automatically renewable with each payment after
18 the initial rental period; and

19 (3) permits the individual to become the owner of the
20 property.

21 (d-3) For purposes of Subsection (a)(4):

22 (1) if the compensation is or was to be paid on a
23 periodic basis, the intent to avoid payment for a service may be
24 formed at any time during or before a pay period; ~~and~~

25 (2) the partial payment of wages alone is not
26 sufficient evidence to negate the actor's intent to avoid payment
27 for a service; and

1 (3) the term "service" does not include leasing
2 personal property under an agreement described by Subsections
3 (d-2)(1)-(3).

4 (d-4) A presumption established under Subsection (b)
5 involving a defendant's failure to return property held under an
6 agreement described by Subsections (d-2)(1)-(3) may be refuted if
7 the defendant shows that the defendant:

8 (1) intended to return the property; and

9 (2) was unable to return the property.

10 (d-5) For purposes of Subsection (b)(5), "business day"
11 means a day other than Sunday or a state or federal holiday.

12 SECTION 2. The change in law made by this Act applies only
13 to an offense committed on or after the effective date of this Act.
14 An offense committed before the effective date of this Act is
15 governed by the law in effect on the date the offense was committed,
16 and the former law is continued in effect for that purpose. For
17 purposes of this section, an offense was committed before the
18 effective date of this Act if any element of the offense occurred
19 before that date.

20 SECTION 3. This Act takes effect September 1, 2019.

President of the Senate

Speaker of the House

I certify that H.B. No. 2524 was passed by the House on May 7, 2019, by the following vote: Yeas 142, Nays 2, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2524 on May 24, 2019, by the following vote: Yeas 138, Nays 2, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2524 was passed by the Senate, with amendments, on May 22, 2019, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor